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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,397	02/04/2004	Peter Hofmann	028987.52962US	2742
23911 7590 07/25/2008 CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300				
EXAMINER				
WILHELM, TIMOTHY				
ART UNIT		PAPER NUMBER		
3616				
MAIL DATE		DELIVERY MODE		
07/25/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/770,397

**Applicant(s)**

HOFMANN, PETER

**Examiner**

Timothy D. Wilhelm

**Art Unit**

3616

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-8,10-13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10-13 and 15-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This office action was made in response to an amendment filed by Applicant on 4/9/2008.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,3-8,10,12,13,16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Nishitake (JP 3-284443). Nishitake discloses a side impact protective apparatus that is incorporated into a side door 3 of a motor vehicle 1, wherein said side door includes an external sheet and an interior element 6, said side impact protective device comprising a gas source 13; a covering 11 including an upper edge side region 14, a lower edge side region, and a front face interconnecting the upper 14 and lower edge side regions; and a gas bag 12 that, when deployed, extends upward along an interior of the side door's window 4, wherein the upper side region 14 is connected to the lower side region along a connection line, as seen in Fig. 4, extending between spaced fastenings disposed at distances from longitudinal ends of the gas bag and adjacent a lower gas bag edge, and also wherein the connection line forms a pivot axis for the upper edge side region 14 of the covering 11 and said front face includes a weakening defined therein. Regarding claims 7 and 12, Fig. 4 of Nishitake discloses

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several boreholes, which lie on a common, arch-like formed central line forming the weakening on the front face.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishitake in view of Tajima et al. Nishitake discloses the claimed invention except for an embedded net-like fabric insert that is provided inside a carrier element of the covering 30 at least adjoining the side impact protective apparatus 10. Tajima et al, however, teaches an air bag device with M an embedded fabric insert 125 formed by a woven cloth 125a with a lattice pattern. Therefore, it would have been obvious to one of ordinary skill in the art to have incorporated the net-like fabric insert 125 of Tajima et al into the side impact protective device 10 of Nishitake in order to easily and more controllably contain the undeployed gas bag.

5. Claims 1,3-6,8,10,13,16-18,20,22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sinnhuber (5,921,576) in view of Hofmann et al (6,616,175). Fig. 6 of Sinnhuber discloses a side impact protective apparatus comprising a pressure gas source 9, a covering 1''' including a downward projecting shoulder and a decorative layer oriented toward and visible from a passenger space of the vehicle, suspended

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with its upper edge on a door interior element 45, and including an upper edge side region, a lower edge side region, and a front face interconnecting the upper and lower edge side regions, and a gas bag 8 having respective longitudinal ends which can be inflated by the pressure gas source 9, the gas bag being folded together and arranged in a resting position along the upper edge side region of the covering 1", and, when inflated by the pressure gas source 9, releasing a suspension connection between said upper edge of said covering and said door interior element 45 and exiting upwardly in a region of a side wall railing through a slot formed between the upper edge side region and a side window 44, wherein the upper edge side region is connected to the lower edge side region along a connection line extending between spaced fastenings (the longitudinal ends of 1" as seen in Fig. 7) disposed at distances from said respective longitudinal ends of the gas bag, wherein the connection line is disposed adjacent a lower gas bag edge (near the pressure gas source 9), and forms a pivot axis for the upper edge side region of the covering. Sinnhuber discloses the present invention except for the front face of the covering including a weakening defined by openings or holes. Hofmann et al teach a side impact protection apparatus for a motor vehicle comprising an airbag and a covering 11 having a decorative layer, wherein upon inflation of said airbag part of the covering swivels inward toward an occupant of the vehicle along a pivot axis 23 created by a weakening in the covering defined by openings (column 3, lines 13-15). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the covering of Sinnhuber with the teaching of Hofmann et al's weakening to ease the process of production by

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only having to produce a single-piece covering with a weakening as opposed to two separate pieces.

6. Claims 11,15, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sinnhuber in view of Tajima et al (6,682,093). Nishitake discloses the claimed invention except for an embedded net-like fabric insert that is provided inside a carrier element of the covering 30 at least adjoining the side impact protective apparatus 10. Tajima et al, however, teaches an air bag device with M an embedded fabric insert 125 formed by a woven cloth 125a with a lattice pattern. Therefore, it would have been obvious to one of ordinary skill in the art to have incorporated the net-like fabric insert 125 of Tajima et al into the side impact protective device 10 of Nishitake in order to easily and more controllably contain the undeployed gas bag.

7. Claims 7,12, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sinnhuber and Hofmann et al, as applied to claims 1,3-6,8,10,13,16-18,20,22, and 23 above, and further in view of Nishitake (JP 3-284443). Sinnhuber and Hofmann et al disclose the claimed invention except for the weakening being formed by several bore holes. Nishitake, however, teaches a side impact protective device EU with a covering 11 on which a weakening 17a is formed by several bore holes lying on a common arch-like formed central line, wherein a connection bar is arranged between two adjoining bore holes. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the weakening in Sinnhuber and Hofmann et al by several bore holes lying on a common arch-like formed central line to ensure a desired weakness in the covering of the side impact protective apparatus.

***Response to Arguments***

8. Applicant's arguments filed 4/9/2008 have been fully considered but they are not persuasive. Regarding Applicant's amendment to claim 1 wherein the covering includes a downward projecting shoulder, the outermost side of cover 11 may be construed as a downward projecting shoulder projecting down from upper edge 14. The clarifier that the shoulder "reaches behind a part of said door interior element is both broad and unclear as to in which direction Applicant is referring said shoulder to be behind said interior element. Nishitake discloses the should to be behind the interior element in an outward to inward direction of the vehicle. Thus, the rejection still stands.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D. Wilhelm whose telephone number is 571-272-6980. The examiner can normally be reached on 9:00 AM to 5:30 PM Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Timothy D Wilhelm  
Examiner  
Art Unit 3616

/Timothy D Wilhelm/  
July 18, 2008

/Kevin Hurley/  
Acting SPE of Art Unit 3616